

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MOBILE EQUITY CORP., §
§
Plaintiff, §
§
v. § Case No. 2:21-cv-00126-JRG-RSP
§
WALMART INC., §
§
Defendant. §

REPORT AND RECOMMENDATION

Before the Court is the Motion for Summary Judgment of Non-Infringement for All Asserted Claims filed by Defendant Walmart Inc. **Dkt. No. 206**. In Walmart's motion and Mobile Equity's response, the parties agree that this motion should be denied if the Court denies Walmart's *Daubert* Motion to Strike Infringement Opinions of Dr. Jakobsson for Applying Incorrect Claim Constructions (Dkt. No. 207). *Id.* at 3; Dkt. No. 230 at 2.

The Court has denied the motion to strike (Dkt. No. 207). Thus, the opinions of Mobile Equity's expert are competent evidence that creates a genuine dispute of fact as to infringement of the asserted claims. As a genuine dispute exists, the Court recommends **DENYING** Walmart's motion for summary judgment (Dkt. No. 206).

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc). Any objection to this Report and

Recommendation must be filed in ECF under the event “Objection to Report and Recommendations [cv, respoth]” or it may not be considered by the District Judge.

SIGNED this 21st day of September, 2022.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE